

INDIANA DEPARTMENT OF STATE REVENUE

Revenue Ruling #2001-13IT

December 5, 2001

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ISSUE

Gross Income Tax – Inventory In State

Authority: Rule 45 IAC 1.1-1-3, IC 6-2.1-2-2, 45 IAC 1.1-3-3

The taxpayer requests the Department to rule whether or not the taxpayer is subject to Indiana gross income tax as a result of owning inventory in Indiana.

STATEMENT OF FACTS

The taxpayer, a New York corporation is selling goods to an unrelated U. S. corporation. According to the sales agreement, the taxpayer is required to store the goods imported from China at a warehouse in Indiana, as designated by the buyer, until the goods are taken by the buyer. The warehouse is a distribution center owned and managed by a third party who is unrelated to either the taxpayer or the buyer. The buyer has contracted directly with the third party for the operation and management of the distribution center. At all times, the merchandise remains intact in its original packaging. The taxpayer never removes the goods from their sealed boxes. Title of the goods is transferred to the buyer at the earlier of approximately 30 days after the goods arrive at the warehouse, or when the buyer directs the third party to ship the goods. The goods that are transferred because of the thirty-day rule are segregated at the warehouse by the third party by simply moving the sealed boxes to another side of the warehouse floor. Approximately 95% of the goods are shipped outside of Indiana to the buyer's customers or to the buyer's other locations outside of Indiana. The buyer reimburses the taxpayer for all transportation, carrying and insurance charges and pays the warehouse expenses directly to the third party.

The taxpayer does not have an office or employees in Indiana, nor does it have salespeople conducting business activities in Indiana. The taxpayer does not rent facilities, is not listed in phone directories and does not have a business address listing in Indiana. Furthermore, the taxpayer is a nonresident seller whose sales contracts are initiated, negotiated and serviced by out-of-state personnel and the goods are shipped

into Indiana from out-of-state to be temporarily stored in a warehouse owned, operated and managed by a third party.

DISCUSSION

Rule 45 IAC 1.1-1-3(b)(3) provides that the maintenance of an inventory or stocks of goods for sale, distribution or manufacture in Indiana creates a “business situs” in Indiana for the owner of the goods. Generally, having a business situs in Indiana establishes nexus for a taxpayer and subjects the taxpayer’s taxable gross income to Indiana gross income tax pursuant to IC 6-2.1-2-2.

Rule 45 IAC 1.1-3-3(d)(6) states that a sale to an Indiana buyer by a nonresident seller after the goods are transported into Indiana is considered to be a sale completed in Indiana, hence, subject to gross income tax.

Rule 45 IAC 1.1-3-3(c)(5), however, provides that a sale to an Indiana buyer by a nonresident with an in-state business situs or activities but the situs or activities are not significantly associated with the sale because it was initiated, negotiated and serviced by out-of-state personnel, and the goods are shipped from out-of state is not considered to be a sale completed in Indiana, therefore, not subject to gross income tax.

Here, although the sale by the taxpayer is initiated, negotiated and serviced by out-of-state personnel, the goods are warehoused in Indiana subsequent to the transportation of the goods into Indiana establishing a business situs in Indiana for the taxpayer with the sale completed in Indiana. This being the case, the taxpayer’s sale of goods warehoused in Indiana to an Indiana buyer is subject to Indiana gross income tax.

RULING

The Department rules that the sale of goods from the Indiana warehouse to the Indiana buyer by the taxpayer is subject to Indiana gross income tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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